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EXAMINER

NGUYEN, SON T

ART UNIT

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/692,835	Applicant(s) FENNELLY, MARTINE	
	Examiner Son T. Nguyen	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 70-77,80-89,91-95 and 98-105 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 70-77,80-89,91-95 and 98-105 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 70-77,80-86,89,94,95,98-102** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The added limitations of "...partly off only said withers" (from claim 70), "...elevating only a front portion" (from claim 80), "...prop up only a front portion" (from claim 89), and "...to raise only a frontal portion" (from claim 94) are not supported in the specification. Applicant stated that support can be found on page 16, lines 28 and page 17, line 5 of the specification; however, the Examiner does not find these two excerpts stating that the pad is being propped up or raised **ONLY** the front portion of the withers or only the withers. In addition, no where else in the specification states such only in the front portion or wither. Furthermore, supported by the drawings and described on [0079][0087] are full pads that extend full length from front to back of the spine of the horse (see fig. 3a), thus, the pads raise the front and the back, and not only the front. Also, fig. 3d shows pads 320a,320b,321a,321b raising the front portion and the back portion, but not only the front portion. Even in the description for fig. 3d, [0090], no where does it states that the

pads only raised the front portion. Therefore, these added limitations are not supported in the specification as alleged by Applicant. In addition, for claim 92, a plurality of densities is not described in the specification.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 70-75,91-93,103** are rejected under 35 U.S.C. 102(b) as being anticipated by Vasko et al.(US 4683709).

For claim 70, Vasko et al. teach a saddle pad apparatus 12 adapted to support a saddle while maintaining both substantially unimpeded movement of the spinal column of a living subject and a desirable balance of a saddle and rider, comprising a first pad 36 disposed laterally to one side of the spine and a second pad 38 disposed laterally to the other side of the spine so that said first and second plurality of pads straddle said spinal column and are sufficiently distant therefrom so as not to impede movement of the spinal column of said living subject by forming a space between said spinal column and said saddle pad apparatus, each of said pads being adapted to individually cooperate with a respective one of withers region gaps or recesses of the anatomy of the living subject; wherein said pads are placed at least partially within gaps or recesses in said wither regions of said subject (col. 3, lines 17-30), said placement of said pads being such that said saddle and saddle pad apparatus is raised at least partly off of only

said withers region of said subject (due to the pads' thickness pushing the centerline 26 off of the withers region, even if small amount), so as to substantially avoid contact of said saddle with the top of the withers, thereby substantially eliminating pressure points in said withers region and maintaining said balance. Note that numerous functional recitations have been incorporated in the claim, to which all functions recited can be performed by the pads of Vasko et al. For example, the pads are adapted to cooperate with a respective one of the withers region gaps or recesses if the user only wishes to use the pads in those area. The pads, nevertheless, can perform the intended function, especially in col. 5, lines 1-10 of Vasko et al., they state that there could be a pocket with two separate inserts, or multiple pockets and inserts. In addition, the pads of Vasko et al. are also configured to raise the saddle at least partly off of only the withers region of the animal if one wishes to do so by only employing the front pads of the multiple pads as stated in col. 5, lines 1-10.

For claim 71, Vasko et al. further teach a third and a fourth pad so that said apparatus comprises four discrete pads, two per side of the spine. See col. 5, lines 5-8.

For claim 72, Vasko et al. further teach wherein at least one of said pads varies in thickness (see figs. 5-8).

For claim 73, Vasko et al. further teach wherein said first and second pads are formed from a visco-elastic foam material (col. 2, lines 65-68 and col. 3, lines 32-48).

For claim 74, Vasko et al. further teach wherein said first and second pads are disposed in pockets 28,30 formed substantially between a first layer 14 of material and a second layer 17 of material.

For claim 75, Vasko et al. further teach wherein said first and second pads are made removable from said pockets via Velcro strips 34,35 disposed at seams of said pockets.

For claim 91, Vasko et al. teach a pad element 36,38 comprising a plurality of rounded edges (for example, fig. 2 where ref. 41 is pointing at) adapted for use in a saddle pad, wherein said pad element is formed from a visco-elastic foam (col. 2, lines 65-68 and col. 3, lines 32-48) and is adapted for selective removal from said saddle pad by a user; and wherein said pad element is particularly shaped to substantially accommodate and fit substantially within a particular withers region recess on the anatomy of an animal on which said pad element and saddle pad is utilized. Note the functional recitation of “adapted” and “shaped to accommodate and fit substantially within”, to which the pads of Vasko et al. are capable of performing the intended function.

For claim 92, Vasko et al. further teach wherein said pad element has a plurality of densities (inherently taught because the pad has some sort of density when compressed or uncompressed) associated therewith in its uncompressed state.

For claim 93, Vasko et al. further teach wherein said plurality of densities are substantially stratified with respect to the width dimension of said element. See figs. 5-7 of stratification of the pad element.

For claim 103, Vasko et al. teach saddle pad apparatus 12 adapted to support a saddle, comprising: a first pad 36 disposed laterally to one side of said spine and a second pad 38 disposed laterally to the other side of said spine, said first and second

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pads straddling said spinal column at a predetermined distance, said predetermined distance sufficiently distant so that said saddle pad apparatus does not impede movement of the spinal column of said living subject by forming a space between said spinal column and said saddle pad apparatus (col. 3, lines 17-30, the space is formed by the thickness of the pads pushing the centerline 26 off of the spinal column, even if small amount); and wherein each of said first and second pads comprises a predetermined shape (col. 4, lines 10-19), said predetermined shape being disposed within a respective one of a withers region gap or recess (along the sides as stated in col. 3, lines 21-27) occurring in the anatomy of said living subject such that said saddle and saddle pad apparatus is raised at least partly off of only said withers region of said subject.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 76,77,80-89,94,95,98-102,104,105** are rejected under 35 U.S.C. 103(a) as being unpatentable over Vasko et al. as applied to claims 70,74 above, and further in view of Woods (5802823).

For claim 76, Vasko et al. teach the layers 14,15,17,18 made out of wool felt or woven nylon fabric, which are fiber based material (col. 2, lines 48-59) but Vasko et al.

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are silent about material (the bottom layer) 17,18 being sheepskin disposed to contact the skin of said living subject.

Woods teaches a saddle pad having a material 62 being sheepskin disposed to contact the skin of said living subject. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the material 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 77, Vasko et al. as modified by Woods further teaches the living subject is an equine.

For claim 80, Vasko et al. teach saddle pad apparatus 12 adapted to support a saddle on a living subject comprising a plurality of pads 36,38 that distribute load from said saddle substantially evenly on said living subject to avoid contact with the living subject's spinal column over only a plurality of non-contiguous regions of said living subject's anatomy such that during riding said saddle is substantially stable around a rotational axis transverse to the longitudinal axis of the spinal column of said subject; said pads further being disposed so as to elevate only a front portion of said saddle and saddle pad apparatus during riding while maintaining said substantial stability around said axis (due to the pads' thickness pushing the centerline 26 upward from the withers regions); wherein said plurality of pads are disposed laterally to said spine in pockets 28,30 formed substantially between a first layer 14 comprise wool felt or woven nylon

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fabric, which are a fiber-based material, and a second layer 17 comprising a fiber-based material (col. 2, lines 47-59), said material layer 17,18 being disposed to contact the skin of said living subject, said fiber-based material layer 14,15 being disposed to contact said saddle. Note that Vasko et al. teach in fig. 8 the pad being of different thickness along its length, thus, technically, the front of the pad (where refs. 55,49 are located) will elevate the front portion more than the back (where ref. 51 is located) due to the thickness.

However, Vasko et al. are silent about said pads further being disposed so as to elevate only a front portion of said saddle and saddle pad apparatus during riding while maintaining said substantial stability around said axis; and the first layer 14 being made out of sheepskin having a pelt hair length between $\frac{3}{4}$ inch and 1 inch.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to only employ the pads of Vasko et al. in the front portion depending on where the user wishes to have cushion effect of the pad, in the front or back or both. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first layer of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice. Vasko et al. as modified by Woods are silent about the sheepskin

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having a pelt hair length between $\frac{3}{4}$ inch and 1 inch. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the sheepskin of Vasko et al. as modified by Woods with a pelt hair length between $\frac{3}{4}$ inch and 1 inch, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 81, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein said plurality comprises four discrete pads, two per side of the spine, each of said four pads being adapted to cooperate with a recess or gap within the anatomy of the subject. See col.5, lines 5-10.

For claim 82, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein at least one of said pads varies in thickness. See figs. 5-8.

For claim 83, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein at least a portion of said plurality of pads are formed from a visco-elastic foam material. See col. 2, line 67,col. 3, lines 32-48.

For claim 84, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein said plurality of pads are made removable from said pockets via Velcro strips 34,35 disposed at seams of said pockets.

For claim 85, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein said living subject comprises an equine.

For claim 86, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach wherein said apparatus is further adapted to support said saddle while

maintaining substantially unimpeded movement of the spinal column of said living subject.

For claim 87, Vasko et al. teach a saddle pad adapted for use with a saddle on a high-withered equine, comprising: first and second substantially flexible elements 14,15,17,18 having roughly the same shape, said first and second elements being bound together in at least a plurality of locations along their periphery, said first element comprising a wool felt or woven nylon fabric and being in direct contact with the skin of said equine; and a plurality of compressible visco-elastic foam pad elements 36,38 disposed between said first and second flexibly elements, said pad elements straddling the spine of said equine at a distance whereby said saddle pad is not in contact with the spinal column of said equine during riding, wherein said pad elements are disposed and configured to substantially fill respective ones of gaps that occur on the anatomy of said high-withered equine in its withers region, thereby substantially relieving this region from excessive pressure and contact with said saddle in a gullet channel which would otherwise exist without said pad elements; and wherein said unimpeded spine movement, said frustration of redistribution, and said first flexible element cooperate to provide reduced discomfort for said equine during said riding. However, Vasko et al. are silent about said first element comprising a thick sheepskin.

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the material 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the

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basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 88, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach at least one peripheral ridge 19 disposed substantially along a front or back periphery of said first and second elements, said peripheral ridge cooperating with an edge of said saddle to substantially frustrate relative motion between said saddle pad and said saddle in at least one direction during riding.

For claim 89, Vasko et al. teach a saddle pad adapted for use, with a saddle, on an equine, comprising: first and second substantially flexible elements 28,30 having roughly the same shape, said first and second elements being bound together (by binding 19 and seam 20) in at least a plurality of locations along their periphery, said first element comprising wool felt or woven nylon fabric in direct contact with the skin of said equine and said second element comprising a fiber-based material (such as wool felt or woven nylon fabric) disposed to contact said saddle; a plurality of compressible visco-elastic foam pad elements 36,38 disposed between said first and second flexible elements, said plurality of pad elements having a first shape (see figs. 5-8) adapted to straddle the spine of said equine with at least a portion of said plurality disposed within said saddle pad and sufficiently distant from said spine such that the movement of the spine of said equine is substantially unimpeded by said saddle and said pad elements during riding, first and second restraining straps 40-43 affixed to at least said second flexible element, said straps each being adapted for substantially concealed tethering to said saddle; and at least one peripheral ridge 19 disposed substantially along a front or

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back periphery of said first and second elements, said peripheral ridge cooperating with an edge of said saddle to substantially frustrate relative motion between said saddle pad and said saddle in at least one direction during riding; wherein said pad elements are adapted to interface only with gaps formed in the withers region of said equine so as to prop up only a front portion of said saddle and saddle pad and provide a substantially invariant relationship between said saddle and said equine during mounted ambulation of said equine (see also col. 5, lines 5-10). However, Vasko et al. are silent about the first element comprising sheepskin in direct contact with the skin of said equine.

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first element 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 94, Vasko et al. teach an apparatus adapted for use on high-withered animals, comprising: a substantially flexible pad 12 comprising a plurality of pockets 28,30 formed substantially between a first layer 14 comprising wool felt or woven nylon fabric, which are a fiber-based material, respectively; and a second layer 17 comprising fiber-based material (col. 2, lines 45-59); said wool felt or woven nylon fabric being disposed to contact the skin of said high-withered animals, said wool felt or woven nylon fabric, which are fiber-based material, being disposed to contact a saddle; a plurality of visco-elastic foam pad elements 36,38 captured by respective ones of said pockets;

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wherein said pad elements and said pad are disposed within gaps created by said withers region (col. 3, lines 17-30, the pads being in the gaps immediate on each side from centerline 26, to which centerline 26 lies along the spinal column). However, Vasko et al. are silent about wherein said first layer comprises sheepskin; and cooperatively form a raised feature element to raise a frontal portion of a saddle and said apparatus disposed over top of said pad elements with respect to a withers region in order to mitigate tilting or rocking of the saddle.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to only employ the pads of Vasko et al. in the front portion depending on where the user wishes to have cushion effect of the pad, in the front or back or both. *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

As mentioned above, Woods teaches sheepskin. It would have been obvious to one having ordinary skill in the art at the time the invention was made to manufacture the first layer 17 of Vasko et al. out of sheepskin as taught by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use (for comfort of the horse) as a matter of obvious choice.

For claim 95, Vasko et al. as modified by Woods (emphasis on Vasko et al.) further teach a pad interface 19 (or the thickness of layer 17,18) adapted to interface between said pad and said animal, said pad interface adapted to (i) dissipate localized pressure; (ii) dissipate heat; and (iii) dissipate moisture. Note that claim 95 depends

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upon a cancel claim 61, thus, this claim is open to different interpretation as to what a pad interface is.

For claims 98,101,102, Vasko et al. as modified by Woods are silent about the sheepskin being Australian Merino sheepskin, and the second flexible element being square quilted fabric, said fabric providing reduced bunching of the second element under said saddle during use. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ Australian Merino sheepskin as the preferred sheepskin in the pad element of Vasko et al. as modified by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. See *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) and *In re Leshin*, 125 USPQ 416. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ square quilted fabric, said fabric providing reduced bunching of the second element under said saddle during use as the preferred material for the second flexible element in the pad element of Vasko et al. as modified by Woods, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious choice. See *Sinclair & Carroll Co. v. Interchemical Corp.*, 325 U.S. 327, 65 USPQ 297 (1945) and *In re Leshin*, 125 USPQ 416.

For claims 99 & 100, Vasko et al. as modified by Woods are silent about wherein said sheepskin comprises a chemical treatments adapted to improve at least one of stain resistance or ultraviolet fading of said sheepskin. It would have been obvious to

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one having ordinary skill in the art at the time the invention was made to employ a chemical treatment to the sheepskin of Vasko et al. as modified by Woods in order to treat the sheepskin to rid of bacteria in the sheepskin, which is a known technique employed in leather or fur treatment. KSR International Co. v. Teleflex Inc., 127 S. Ct. 1727, 1739, 1740, 82 USPQ2d 1385, 1395, 1396 (2007).

For claim 104, the limitations have been explained in the above (see especially claims 87,89) except for wherein said pad elements comprise a three dimensional profile, said three dimensional profile fitting within respective ones of said gaps. As shown in Vasko et al.'s figures 2 (in phantom),4-7, the pad elements are of 3-D profile. In addition, col. 4, lines 10-19, Vasko et al. further teach different dimension of the pads to fit different type of horses.

For claim 105, the limitations have been explained in the above (see especially claims 87-89) except for wherein said pad elements comprise a profile that interface only with gaps formed in the withers region of said equine (col. 3, lines 20-30). For "only a front portion" limitation, please see above.

Response to Arguments

7. Applicant's arguments filed 1/28/08 have been fully considered but they are not persuasive. Note that some arguments have already been addressed in the previous actions, thus, see the previous actions.

Applicant believes that the amended claims overcame the 112 rejection and also that page 24, lines 11-14 of Applicant's specification does teach the

limitation of "raised at least partly off of only the withers region" or "elevate only a front portion" or "prop up only a front portion" or "raise only a frontal portion".

In further analyzing the except as provided by Applicant, the Examiner does not believe that this except in any way clearly states that only a front portion of the withers region is being raised/elevated/propped. As argued before in the previous action, clearly from figs. 3a,3d, pads 304a,304b,320a,320b, 321a,321b are located along the whole length of the pad apparatus 300 and located at the front and back portions of the pad apparatus. No where in the specification and shown in the drawings that ONLY the front portion of the withers region is being covered by the pads. Especially fig. 3d, Applicant clearly shows that there are rear pads 321a,321b in pocket 317a. Based on fig. 3d, there is no way one can say that only the front portion is raised because both front and back areas are provided with the pads. From the previous action, Applicant fails to address this issue brought up by the Examiner and in the most recent response filed 1/28/08, all Applicant addressed is that support is found on page 24, liens 11-14, which does not even support the questionable limitation whatsoever. Based on the specification and drawings, the Examiner is maintaining her 112 rejection as stated above.

Applicant argued that Vasko does not teach or suggest pads placed at least partially within gaps or recesses in the withers region of the subject, the placement of the pads being such that the saddle and saddle pad apparatus is raised at least partly off the withers region of the subject. In addition, Applicant

notes that the teachings of the Vasko disclosure pointedly teach away from employing only the front pads of the multiple pad embodiment disclosed.

As stated in col. 3, lines 17-30 of Vasko et al., they clearly pointed out that the pads are to be located immediately adjacent the spinal column, which spinal column includes withers region. According to Vasko et al., the pads are laid in similar fashion as that shown in fig. 3c of Applicant, i.e. immediate the spinal column where the gaps or recesses exist. In addition, as stated in the above 112 rejection, the limitation of "at least partially off of only the withers region" is not supported in Applicant's specification and/or drawings, thus, this limitation is mooted. However, the Examiner believes that Vasko et al. do teach the at least partly off of the withers region because of the pads' thickness, the pads will push the centerline 26 off of the withers region or spinal column somewhat. Just like what is shown in fig. 3c of Applicant. From this fig. 3c, one can see that it is common sense that the thickness of the pads 320 that pushes the centerline area 310 upward and partly off of the withers region. This is the same concept in Vasko et al. Furthermore, as mentioned above, Applicant does not teach only employing the front pads, thus, arguing that Vasko et al. do not teach this is irrelevant. Even if so, Vasko et al. clearly stated that a variety of different configuration can be used for the pads and pockets depending on the type of horse and saddle employed together with the pads (see col. 4, lines 10-19 and col. 5, lines 3-8). Also, Vasko et al. Teach that the pads can be removed as desired, thus, one can take out the front or the back pads, depending on the intended use. Note that Applicant is claiming an apparatus claim, thus, if the structure of Vasko et al. can perform the intended function, then Vasko et al.

teach leaving the front pads only depending on if the user only want the front area to be cushioned.

Applicant argued that Applicant notes that "[a] patentable invention may lie in the discovery of the source of a problem even though the remedy may be obvious once the source of the problem is identified. This is part of the 'subject matter as a whole' which should always be considered in determining the obviousness of an invention under 35 U.S.C. § 103." In re Spinnable, 405 F.2d 578, 585 (CCPA 1969). Applicant submits that the precise problem to be addressed by the invention of Claim 70 is one of supporting a saddle while maintaining both substantially unimpeded movement of the spinal column of a living subject and substantially eliminating pressure points in the withers region of the subject. The teachings of Vasko are aimed at distributing the load evenly along the horse's back.

First of all, claim 70 is rejected under 102 and not 103 obviousness. Second of all, although not specifically stated like Applicant, Vasko et al.'s invention does solve the same problem as that of Applicant and that is to alleviate pressure points in both the spinal column and withers region (which is part of the spinal column area). See also the background discussion in Vasko et al. Lastly, the pads of Vasko et al. can be removed from the pockets, thus, structurally, it can allow a user to selectively placing pads as desired. Note again that Applicant's specification and drawings fail to support only the front pads are employed.

Applicant argued that claim 91 recites a pad element having a specific structural limitation, that limitation being that the pad is shaped to substantially accommodate and substantially fit within a particular withers region recess on the anatomy of an animal. Although function flows naturally from this recitation of structure, the fact remains that the invention of Claim 91 requires pads having a particular structure (i.e., shape). Applicant can find no support in Vasko for the proposition stated by the Examiner.

The language is broad because there is no definite dimension of the recess so the pad can be bigger than the recess, but nevertheless, a portion of the pad can still “substantially” accommodate and fit within the recess. Even if assuming that Vasko et al.'s pad is a “big” pad running from front to back of the horse, at least the front portion of the pad does substantially accommodate and fit within a particular withers region recess. The claimed language does not state that the whole pad only fit within a particular withers region. Note also that the pad of Vasko et al. is visco-elastic, thus, it will accommodate the particular recess region due to the nature of the material being “flowable”. In addition, col. 3, lines 32-48 teaches the visco-elastic pads and col. 4, lines 10-19 teaches the pads being of a variety of shapes and depths/thicknesses, thus, one of ordinary skill in the art can modified the shape and thickness as desired for the type of horse used.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO

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Customer Service Representative or access to the automated information system, call
800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Son T. Nguyen/

Primary Examiner, Art Unit 3643